

Remarks

The claims under direct examination are claims 26-44. It would appear that even with the current restriction on the basic method claim, claim 45, the entire claim set, 26-49 will not be allowable even though the device claims are allowable under the inclusion of the matter in claim 39 into newly amended claim 26.

First, applicants maintain that the final rejection is premature and the examiner has not addressed the arguments provide in the first action reply. Among these, applicants believe that examiner did not fully comprehend or treat the English Declaration of the inventors, or we have misunderstood his comment about the example original copies provided to help substantiate the Declaration. This issue needs to be fully addressed before a final rejection can be given. Further several of the major differences identified by the applicant as well as teachings in Bays et al. which are teaching opposite to the present invention's use and structure were not truly addressed by the examiner in his latest action.

Second, as an expedient, we have modified claim 26 to include the allowable matter from claim 39, and determined that essentially all the other dependent claims can be dependent on the presently amended claim 26. Since a divisional filing appears to be required to reach the method claims of the present invention, it is envisioned that divisional applications to recover any lost matter within the device claims can also be reapplied for.

As to the various 35 USC §103 obviousness concerns based primarily on a published patent application by Bays et al., US 2005/0165462, the following observations and criticisms are presented. Included in attachments is information and Declaration of the inventors, which is in English, states that the work of the present invention had been completed, except for filing in a patent office, long before the priority date of the provisional filed by Bays et al. The English Declaration specifically identifies what the German words of the 'original proof' mean. Since all dates are numerical, upon reading the English declaration and viewing the additional evidence, in true reproduction of originals on file in Germany, an educated American should be able to understand the truth of the statements made in the Declaration that the invention as described in the specification was indeed in hand with the inventors earlier than the earliest priority date of the Bays et al. reference.

Besides the priority issue that the disclosures of Bays et al. were not done ahead of the present invention, there are a few concepts exposed in the present invention which are not discussed nor implied in the prior art and is some cases taught in opposition in the prior art.

In contrast to the examiners allegations that specific aspects of the prior art are not countered by specific aspects in the specification of the present invention we pose what follows indeed has such specific differentiation from the prior art cited by the examiner.

First let us confirm that the language of claims 32 through 38 deal with embodiments of the special devices for gynecology, etc. which are described in Figures 5-7. Here the mirrored surface is around the proximal end of the applicator and functions essentially diametrically opposite than the mirror taught and discussed in Bays, e.g. paragraph 0004, last line is left column. The mirror described and claimed in the present invention allows distribution and irradiation of a larger area facing the hemispherical mirror in a fairly uniform manner. The mirror, in Bays, is the rather commonly used distal end mirror to reflect central light traveling down the applicator which as noted in Bays reflects light back into the diffusing medium, which had not been scattered on its first pass through the medium. The positioning of the reflective element and its function clearly differ from the general comments provided in Bays and other prior art.

As to application of this point to the claim 28 reference to a mirror in the distal end, which is essentially the same as referenced by Bays et al., not their invention but to prior art, indeed this element is unique only in that it is an addition to the unique, non-obvious aspects of the base claim 26 on which it depends. In other words we would agree that adding the restriction of claim 28 does not make claim 26 more novel or non-obvious. It is just adding an additional item to provide another useful embodiment of the present invention.

While the figures in Bays et al. are not always clear, the description in Bays et al. on the shape of the diffusing medium sections are always referred to as cones and he demonstrates apparently collimated light in selected figures. No mention is made of parabolic shapes or paraboloids for the diffusing medium. The geometrical constraints and the distribution of scattered light from cones rather than paraboloids are mathematically different as are the distribution restraints to obtain near homogeneous distribution of light,

along the length of the diffusor, coming from a light guide entering at the proximal end of the diffusor, as desired from the present invention.

Further in Bays et al. the various scattering sections are allowed to have the same concentration and type of scattering particles as long as there is a scattering section between them. See paragraph 0057, lines 7-11. Whereas in the present invention paragraph 0026 identifies a continually increasing concentration of scattering particles progressing from the proximal end to distal end of the diffusor.

Lastly as noted earlier the research leading to the present invention was essentially completed in the fall of 2001. Evidence is presented to demonstrate the thesis on which the invention is based was submitted in October of 2001 and formally accepted in November, 2001 on the dates shown in the attachments. The English Declaration also indicates that the thesis was kept unpublished until the initial priority documents were filed in Germany in 2002.

We provide the Declaration in English, evidence of signed dates and sample pages of the thesis showing some embodiments of the present invention to swear back before the Bays et al. patent application priority dates.

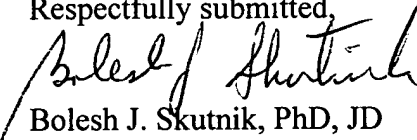
Please take action to establish the undersigned as the proper addressee for any future actions in this docket, as this was not done in the last action, which was sent to attorneys no longer of record. Delayed receipt of the action and extra cost was caused by the Patent Office disregard of dealing with the current attorney of record.

With these remarks and the amendment of claims for allowable material claim 39, it is believed that the disclosure is now in condition for further analysis and allowance. Reconsideration is respectfully requested. An early and favorable response is earnestly solicited. Thank you.

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CeramOptec Industries, Inc.
515 Shaker Road
East Longmeadow, MA 01028
Phone: (413) 525-8222

Respectfully submitted,


Bolesh J. Skutnik, PhD, JD
Reg. No. 36,347
Attorney for Applicants

Fax: (413) 525-0611